

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
JAMES K. BREDAR
U.S. MAGISTRATE JUDGE

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

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2005 DEC 12 10 06:04
December 12, 2005

TO ALL COUNSEL OF RECORD

Subject: *Broadwing Corporation f/k/a Corvis Corporation v Great Northern Insurance Company*, Civil Action No. WDQ-04-~~3136~~

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Dear Counsel:

This case has been referred to me for disposition of discovery disputes. Plaintiff, in the form of a letter to the Court that will be docketed but filed separately (**UNDER SEAL**) as Exhibit A to this Letter Order,¹ has sought an expedited hearing with respect to whether it may use a particular document obtained in discovery, specifically at a deposition scheduled for tomorrow. The defendant has filed a response (Paper No. 59) in which it objects. No hearing is necessary. Local Rule 105.6.

The document at issue apparently is a draft report of an expert opinion that inadvertently was included in a document production, the return of which has been demanded. Plaintiff contends that defendant's claim of work product protection for the document has been waived by the production. The defendant asserts that there has been no waiver, on the one hand, and, on the other hand, that even if there had been waiver, the document could not be used in the particular deposition tomorrow because it is expert opinion material and the deposition tomorrow is a fact deposition of a person who will be designated as a testifying expert and also will be deposed later as an expert.

The request of the plaintiff is hereby DENIED. The plaintiff is precluded from putting the document to any use pending a ruling after the issue has been fully briefed and the Court has had a reasonable opportunity to review the issue. The Court leaves open the possibility that the deposition that will occur tomorrow may be reopened at a later date, at defendant's expense, in the event that the plaintiff ultimately is successful in convincing the Court that it should have been able to use the document in deposition at this stage.

Despite the informal nature of this letter, it should be flagged as an opinion and docketed as an Order.

Very truly yours,



James K. Bredar
United States Magistrate Judge

JKB/cw

¹The letter is being filed under seal because the document at issue is among the exhibits attached to the letter.

Page Two

December 12, 2005

cc: The Hon. William D. Quarles, Jr.

Court file

Chambers file